SERVICE DATE
DEC 26 1996
33804-2

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant,	)	DOCKET NO. UT-960126
v.	)	
U S WEST COMMUNICATIONS, INC., Respondent.	)	FIFTH SUPPLEMENTAL ORDER

Nature of the Proceeding: In this docket, USWC has filed a tariff in which it proposes to terminate its Centrex Plus service for new customers, allow continuing service to existing Centrex Plus customers within specified limitations,[1] and terminate all Centrex Plus service in the year 2005, the year in which the last of its existing Company-wide Centrex Plus contracts expires. The Commission suspended the proposed tariff amendment pursuant to RCW 80.04.130 and instituted a proceeding in which the Company could demonstrate that the proposal is fair, just, reasonable and sufficient pursuant to RCW 80.36.080. The Company challenged this decision in Superior Court; the court remanded the matter to the Commission for conclusion of the proceeding, indicating that the matter was not ripe for its decision.[2]

Commission: The Commission rules that the Company may not withdraw Centrex Plus, as it requested, in the absence of suitable tariffed alternatives available for consumers and resellers.

Appearances: Lisa A. Anderl, attorney, Seattle, represented respondent U S WEST Communications, Inc. Shannon Smith, Assistant Attorney General, Olympia, represented Commission Staff. Roselyn Marcus, Special Assistant Attorney General, Carlisle, Pennsylvania, represented the Washington State Department of Information Services (DIS). The following attorneys represented Intervenors in the proceeding: Shared Communications Services, by Elizabeth Thomas, Seattle, and Beth-Karan Kaye, Portland, Oregon; Metronet Service Corporation ("Metronet") and MCI Telecommunications Company ("MCI"), by Brooks H. Harlow, Seattle; AT&T Communications of the Pacific Northwest, Inc., by Gregory J. Kopta and

[1] Inter alia, it would allow existing customers to increase the number of lines served for specified reasons and within specified limitations. It would also allow customers to terminate the service without the payment of penalties that might be provided for in contracts for the service.

[2] The Commission subsequently ruled that the statutory suspension period was tolled during the time the matter was undergoing review in superior court. In light of the timing of this decision, with the order entered before the expiration of the original suspension period, the ruling does not affect the proceeding.

Alan G. Waldbaum, Seattle; Frontier Telemanagement, Inc. ("FTT"), by Sarah Siegler Miller, Portland, Oregon, and Michael J. Shortley III, Rochester, N.Y.; MFS Intelenet of Washington, Inc., by Douglas G. Bonner and Morton J. Posner, Washington D.C., and Public Counsel, by Robert Manifold, Assistant Attorney General, Seattle.[3]

I. BACKGROUND AND INTRODUCTION[4]

Centrex Plus is a service that uses individual telephone lines to serve instruments for the benefit of relatively large, often commercial, customers. Each instrument requires a line. The service is an alternative to a PBX, or private branch exchange, in which trunk lines serve a small local switch, and the switch or branch exchange in turn serves the instruments. Because all the extension lines are not used at the same time, a single trunk can serve a number of instruments. Centrex Plus is the latest in a long series of similar services, defined by the specific functions offered, with names including Centrex, Centraflex, and Centron. Prior services have been terminated, often allowing existing customers to continue the service, upon the offer of a new or replacement service. In this proceeding, the Company has offered no replacement service but states that a replacement is under development.

The Company developed Centrex as a means to satisfy its largest customers' needs in competition with alternative services such as PBX systems. Because the largest customers could secure alternatives at a low per-line, per-location cost, the rate structure of Centrex also offered those advantages.

In Docket No. U-86-86, the Commission approved the Company's request to classify the Centrex package of features as competitive.[5] In conjunction with the Centrex competitive features, the Company proposed to offer two monopoly or "bottleneck" services: the network access connection, or NAC, and the network access register or NAR[6]. The Commission granted the Company's request for competitive classification of the intercom ability and the identified Centrex features but instructed the Company in the order approving competitive classification that:

[3]Public Counsel did not participate in the proceeding during the hearing or post-hearing stages.

[4]A somewhat extended introduction will provide context for our decision.

[5]Only the Centrex feature package and intercom calling ability were approved for competitive classification.

[6]The NAC is the equivalent of the local loop or line and provides access to the network. It includes the termination, or connection to the switch; the drop, or connection to the customer premises; and the loop, or pair of wires connecting them. The NAR is the Network Access Register and operates to restrict or enable the lines in a proportion selected by the customer to mimic the abilities of PBX trunks. The NAC plus a NAR is equivalent to single line service.

> The Commission has some concern that in a competitive era, the Commission needs to be sure that the company is not discriminating by means of its monopoly over basic transmission. The Commission anticipates that the company will not package together monopoly transmission services with competitive options. The Commission would prefer to see the company moving in the direction of unbundling monopoly and competitive elements as much as possible.[7]

It was clear in that proceeding, and reaffirmed in subsequent proceedings, that the Commission was approving the competitive classification only of the Centrex features[8] and not of the NAC and NAR elements. The Company did, however, package monopoly transmission services with competitive elements.

The Commission next considered related issues in the "Centrex Plus" cases, Docket Nos. UT-911488, et al. In its order dated November 18, 1993, the Commission observed that the Company's Centrex Plus proposal increased rather than decreased the bundling; noted that the Company's stated purpose in making its filing was, in essence, to price equivalent services equivalently; and stated the following in rejecting the Company's proposal:

> We rule that the Company . . . must tariff the monopoly bottleneck service. * * * It must provide cost support data for its tariff and its price list components parallel with its price support for comparable services in the business and private line tariffs.
>
> We order the Company to begin true unbundling of its Centrex service. In particular, it must tariff the Centrex station line NAC as a bottleneck monopoly element, and it should reduce the bundling of elements to a minimum consistent with prudent engineering principles for minimum quality of service.

In the filing considered in that proceeding, the Company proposed to restrict the service – i.e., to withdraw the service from customers having two to twenty lines, an action with significant parallels to the present proposal. In refusing the request, the Commission stated:

> The Company's proposed Centrex Plus price list would restrict Centrex Plus against services to customers having fewer than 20 lines at a single premise. Intervenors point out that this will severely restrict opportunities for resale among small business customers. It would bar

[7] Fourth Supplemental Order, In re Pacific Northwest Bell, Docket Nos. U-86-34, et al. (April, 1987, page 15). See also, Docket No. U-88-2186-P, In re Contel of the Northwest, Inc., Dec., 1988.

[8] See, e.g., Fourth Supplemental Order, Docket Nos. UT-911488, et al., p. 8 and p. 11.

> smaller customers from the service, and would severely restrict resale, without reclassification to redefine the market, and without showing whether that would affect the competitive view of the market for the services.
>
> Under the law, USWC may discriminate among customers in a competitive market. But it may not, after classification, without specific Commission approval, use activity in a broadly defined market to secure competitive service classification, then segment the market it is approved to serve and unilaterally eliminate a noncompetitive or less competitive segment from the service. If the company perceives that it has a captive customer base among smaller customers for its tariffed business line services, then reclassification may be proper. <u>Restricting such customers from receiving Centrex services either directly or by resale would be anticompetitive, rather than the response to a competitive market situation.</u>
>
> <u>*That is not to say that the company may never restrict its service. It must, however, do so consistent with our approval of the consequences.*</u> [Emphasis added.]

In its compliance filing in UT-911488, <u>et al.</u>, the company did not completely unbundle the service required to provide Centrex. The Commission approved the filing,[9] satisfied that it moved in the direction that the Commission had ordered.

In the recent rate case, Docket No. UT-950200, the Company proposed an increase to smaller customers but did not take further steps toward true unbundling of the elements of its Centrex services until the Commission directed it to do so.[10] In the Fifteenth Supplemental Order, the Commission said:

> The Commission accepts Metronet's argument that it is high time for the Commission to order the Company to take the steps it encouraged the Company to take in the Centrex Plus compliance filing order. The order and its predecessor were clear in their terms and in their import. The Commission accepted a filing that fell short of perfection but enjoyed substantial agreement among most parties -- excluding Metronet -- and because it was a step in the direction ordered by the Commission.

[9] Metronet sought judicial review of the Commission's approval of the compliance tariff.

[10] The cited cases also addressed appropriate rates, repeatedly stating the Commission's intention that the Company charge equivalent rates for equivalent services.

> Now in this filing the Company has proposed measures that would regress from the imperfect arrangements now in effect.
>
> The Company shall file tariffs effecting the unbundling of the Centrex elements, pricing the highest Centrex Plus station line at the private line NAC rate, and remove the station location requirement. Doing so is consistent not only with both of the Centrex Plus orders cited above but also with the federal requirement requiring resale and unbundling. [Footnotes omitted.]

The Company filed simultaneously in all of its jurisdictions for authority to withdraw Centrex services.[11] Its advice letter in this jurisdiction, Advice No. 2740T, cites pricing anomalies as the reason for seeking withdrawal.

II. IS THE COMMISSION PRECLUDED AS A MATTER OF LAW FROM INTERFERING WITH THE COMPANY'S PROPOSED WITHDRAWAL OF CENTREX SERVICES?

USWC's principal argument is that the Commission is precluded as a matter of law from suspending its tariff or interfering with its withdrawal of the service.

The Company contends that RCW 80.04.130[12] allows the Commission to suspend only those tariffs that by their terms specifically "change" or increase rates. It contends that withdrawal of a tariff cannot be considered a change to an existing rate or charge.

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[11] The filing occurred on February 5, 1996, after Congress passed the Telecommunications Act of 1996 and before President Clinton signed it. The Act, inter alia, requires incumbent local exchange companies to make services available for resale and cedes to the States the decision of whether to allow withdrawal of services. The Act is Public Law No. 104-104, 110 Stat. 56, codified at 47 U.S.C. Sec. 151 *et seq.* (1996), and will be referred to in this order simply as "the Telecom Act."

[12] The statute reads as follows:

> 80.04.130 Suspension of tariff change—Mandatory measured telecommunications service—Washington telephone assistance program service. (1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. * * *

[Emphasis added]

Commission Staff responds that the proposed tariff would increase the rates customers would pay for the same level of service contained in Centrex Plus, that small to medium customers could find no reasonable alternative, and that similar services are not even theoretically available from alternative providers in all parts of USWC service territory.

The Commission determines that the proposal would indeed have the "effect" of changing the rates and charges for service, in that its consequence is that customers will no longer be able to receive the service at the existing rate. The company's reading of the statute would eliminate the "effect" language and leave the Commission without power to address proposals that, as this, do not by their terms impose a change but do so indirectly. That the change might not occur for some customers until the year 2005 is a matter of timing. The Company has no alternative service available now at the same rate and the mere possibility that such a service may be developed at some uncertain rate level does not prevent its current proposal from being a change in rates or charges based on currently-available service.

It is also apparent that the Company's proposal would have the effect of increasing rates for customers -- particularly for smaller customers -- now using Centrex Plus for whom, under the proposed withdrawal, the Company provides no equally inexpensive alternative service.

The Company acknowledges that WAC 480-80-320 requires tariffed service to be withdrawn by a tariff filing, but argues that the regulation only requires the company to file a tariff to withdraw a tariffed service. The Company's implicit contention is that the Commission has no authority to suspend or act upon a tariff filed under a rule unless the power to act upon it is specifically stated in the regulation. We reject that view. RCW 80.04.130 empowers the Commission to act in every instance when a tariff is filed that meets the criteria of the law.[13]

Competitive nature of the service. USWC argues that Centrex Plus is a competitive service, and that the contested tariffs are in place only to implement a competitive offering.

USWC urges that "Centrex" is defined by the features, not the bottleneck services, and that because the Company has the power to withdraw a competitive service, it may withdraw all associated services, tariffed or not. The Commission rejects that argument. It is clear that the NAC and NAR elements are indeed tariffed, and the tariff standard applies to them irrespective of the nature of associated services. We have detailed above our expectations, our directions, and our orders that the Company unbundle the elements of Centrex service. Unbundling means that the elements are not bound together and that they are consequently available separately. This is consistent with the requirements of federal law regarding unbundling and resale.

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[13] See, McLean Trucking v. United States, 346 Fed.Supp. 349 (North Carolina), aff'd 409 U.S. 1121, 35 L.Ed.2d 253, 93 S.Ct. 937 (1972).

USWC argues that the features have been found competitive -- alternatives are available; that Centrex has less than 15% market share; and that Dr. Zepp testified unequivocally in the rate case that USWC ought to be allowed to withdraw Centrex.[14] The Commission acknowledges that the Centrex features and intercom ability are classified as competitive, but that does not answer any relevant question that is posed to us. We observe that the competitive market has changed substantially since the Commission decided the competitive classification issues in Cause No. U-86-86 and reaffirmed it in Docket No. UT-911488. The market for USWC's service according to this record includes resellers and potential resellers to a greater degree. Federal law has changed substantially since we entered those orders, and we are now subject to provisions of the Telecom Act and related regulations. The fact that a service is classified as competitive does not mean that its withdrawal may not be anticompetitive. And we have already indicated, in the Order in Docket No. UT-911488, that we have the power to examine proposed withdrawal of competitive services, to determine whether it would have impermissible effects.

USWC argues that there is no rational basis for other parties' desire that USWC offer a replacement before the Commission approves withdrawal, and that USWC has no information that the Commission has ever done the same thing any other time. We observe that we are unaware of any exactly comparable situation. We find that anticompetitive concerns are a rational basis for other parties' arguments and we rule that we do have the power to suspend this proposed tariff and to reject it upon a proper record.

III. IS THE PROPOSED WITHDRAWAL FAIR, JUST, REASONABLE AND SUFFICIENT?

USWC contends in support of its withdrawal proposal that it is justified because the service has become obsolete and because availability of the service for resale results in what it calls "uneconomic arbitrage." It urges that the unbundled elements are priced inappropriately -- under cost -- and that they should not be separately available.

Obsolescence. The Company's argument that the service has become obsolete has no credible, objective support in the record. The Company acknowledged that demand for the service continues high and that it has experienced significant -- over 300% in three years -- growth in sales, but contends that nonetheless that it is obsolete. Its descriptions of obsolescence are general in nature and are not convincing; it contends that growth in sales results largely from conversions to Centrex Plus by customers who had previously used other, now withdrawn and replaced, Centrex services and were mere conversions, not new customers.

[14] Dr. Zepp's rate case testimony is not before us and did not address the specific proposal that the company has made in the context of this proceeding.

It appears to the Commission that, either way, a large and increasing number of customers are finding that Centrex Plus service meets their needs. The Company has not supported its contention that the service is obsolete. Neither has the Company come forward with a proposed replacement service that is not "obsolete".

Uneconomic arbitrage. The Company contends that availability of the service under new resale requirements will result in "uneconomic arbitrage". Specific cost information was not offered into this record.

Commission Staff argues that USWC failed to prove its claim of uneconomic arbitrage. Staff contends that alleged revenue losses do not prove uneconomic arbitrage and that there is no evidence of any effect on net revenues or net income. Staff also contends that the Company's revenue projections don't consider growth in services. Finally, the Commission Staff argues that Centrex resale is not uneconomic in a "value-added" sense because resellers do bring added value.

The Commission observes that, if the service is inappropriately priced as the Company contends, the appropriate response is to change the pricing. We encourage the Company to do so. The evidence is not sufficient on this record to draw reliable conclusions about pricing, the revenue consequences to the Company of various scenarios, or the effect on income of various gross revenue levels.

If a service is not recovering its costs or is otherwise inappropriately priced, the appropriate response is to reprice the service elements. This simple suggestion has been adopted in other jurisdictions addressing Centrex Plus withdrawal. The Commission has repeatedly encouraged the Company to adjust the prices of its Centrex elements so that, across its services, equivalent services are priced equivalently. Doing so will reduce or eliminate the opportunity for uneconomic arbitrage and the matter will be resolved.

Conclusion. There is insufficient evidence in this record for the Commission to find that the change in rates or charges to existing or potential future customers that would result from withdrawal of the service would be fair, just, reasonable or sufficient.

IV. DOES THE PROPOSED WITHDRAWAL HARM COMPETITION OR HINDER THE DEVELOPMENT OF COMPETITION?

Intervenors and Commission Staff argue that the proposed Centrex Plus withdrawal will harm competitors and impermissibly interfere with the development of competition. Policies of both state and federal law promote the development of competition,[15] and provisions in the Telecom Act require states to prevent anticompetitive results.[16]

Commission Staff argues that state, federal and Commission policies favor resale and that the Company has been ordered to unbundle elements – and is withdrawing it so it won't have to unbundle. Staff and Intervenors contend that the proposal is anticompetitive and designed to disadvantage competitors, which they say is shown by the lack of a replacement product. They argue that resellers would have no comparable product to sell.

Intervenors argue that there is no effective or price-constraining competition in local markets and this proposed withdrawal would make such competition more difficult to achieve and that some customers would have no comparable alternative at all.

The Company responds that there is no evidence that Centrex resale is essential for competition. It notes that AT&T does not resell Centrex and has no plans to do so; that MCI does not resell Centrex and has no known plans to do so; that Metronet offered no evidence about the effect of this proposal on its operations; that MFS does resell but did not quantify any harm from the proposal – and that it has its own facilities, in any event; that FTI presented no evidence of harm, or the extent of its operations or use of Centrex in resale, and admitted it has other options; that SCS resells but presented no evidence about the number of customers that it serves and that it has facilities that could provide Centrex and does not contend that Centrex is its only option for providing service.

The Commission believes that the proper question is not whether Centrex Plus is essential for competition, but whether the withdrawal would operate in an anticompetitive manner. Here, the evidence indicates that it would.[17]

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[15] See, The Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 et seq. (1966) ("the Telecom Act"; RCW 80.36.300, et seq.

[16] See, Sections 251(c)(4) and 251(b)(1) of the Telecom Act and Paragraph 968 of the FCC's First Report and Order, CC Docket Nos. 96-98 and 95-185.

[17] The evidence – including the timing of the request, an internal memorandum, and publicly quoted statements by Company representatives – also indicates that anticompetitive motives led to the proposal.

Dr. Zepp[12] and Mr. Raines both discussed and demonstrated the anticompetitive nature of the proposal, which has the potential to eliminate resellers and reduce consumer choice. It has been noted, as Ms. Baird and Mr. Raines both testified, that competitive local exchange companies do not operate in significant portions of the State. The facts we find are that the Centrex Plus service is popular, that growth reflects an increasing demand, particularly among small businesses; that no analogous product is now offered by another provider within USWC's territory; that no other providers, singly or in combination, have the current ability to offer a replacement service throughout USWC's territory; that withdrawal would leave some telecommunications providers without any comparable option for serving customers, especially small customers, and that withdrawal would leave all resellers without the ability to offer a popular package as one option to their customers.

Conclusion. The Commission concludes, based upon the record in this proceeding, that withdrawal of the Centrex Plus package, including both the tariffed elements and the elements classified as competitive, would result in increased rates and charges that have not been shown to be fair, just, reasonable, or sufficient; would be anticompetitive in effect; would tend to destroy or inhibit competition; would violate the policies of both state and federal law; and would be contrary to the public interest. Without an appropriate replacement product, withdrawal of this product at this time will have a substantial adverse effect upon both resellers and consumers and upon competition.

V. EFFECT OF PROPOSED RESTRICTIONS

If the proposal is approved, are the proposed restrictions for existing customers on growth and resale sufficient? Washington's Department of Information Services states that the proposal would adversely affect its operations and asks that the Commission disapprove the proposal unless all limitations on service to existing customers are removed. It contends that the proposed restrictions are vague, and argues that the State would be forced to use more expensive alternatives if the proposal is approved. Resellers argue that the proposed restrictions would prevent them from expanding their offerings, from meeting needs of present customers, and from serving new customers.

If we were to find withdrawal permissible, we would review interim provisions closely to determine the need for changes in those provisions. We see no need to do so in light of our decision.

[12] The company urged that Dr. Zepp's testimony is impeached by his statements in the Company's prior rate case. Dr. Zepp's testimony there is not relevant in this matter because the present proposal had not been made and there was thus no referent or appropriate context for the testimony.

CONCLUSION

In conclusion, the Commission rejects the Company's proposal to withdraw its Centrex Plus service and to allow existing customers "grandparent" status until the year 2005. We find that the proposal is impermissibly anticompetitive; that it would have the effect of changing and increasing customers' rates and charges for comparable service and depriving some customers of any comparable service; and that the resulting changes are not shown to result in rates and charges that are fair, just, reasonable and sufficient. We find that the service is not obsolete and that "uneconomic arbitrage" cannot be found on this record as support for withdrawal. We encourage the Company to adjust its Centrex Plus package and related tariff rates and charges if it believes that the service is not economical at its current rates and prices. We find that the Company's withdrawal proposal is inconsistent with the public interest and that it would result in service that is inadequate to meet the needs of existing and potential customers and insufficient to meet the needs of substantial numbers of customers for service.

We accept the Commission Staff position that withdrawal may be appropriate when the Company makes comparable services available.

We are not required to, and do not, decide whether the proposed conditions for continuing service after withdrawal are adequate. Neither do we, nor are we required to, decide that any withdrawal of the service would be improper that inconveniences some customers, that results in some increased charges for some customers, that inconveniences some resellers, or that leaves some customers or potential customers in relatively remote areas without immediate comparable replacement service. We will defer those decisions to another day, another proceeding, and another record.

Based on the entire record in this matter and upon the above findings of fact, the Commission hereby makes and enters the following ultimate findings of fact. The findings of specific fact made above are incorporated into the following ultimate facts by this reference.

FINDINGS OF FACT

1. The Company on February 5, 1996, filed with the Washington Utilities and Transportation Commission a proposed tariff change to withdraw its Centrex Plus and related services, offering existing customers the opportunity to continue receiving service until the year 2005.

2. The Commission suspended the proposed tariff change on February 23, 1996, and ordered that an investigation be conducted into the proposal.

3. The Company sought judicial review of the suspension decision. The Court remanded the matter to the Commission after 63 days had elapsed. The Commission ruled that the statutory suspension period was tolled during the period of judicial review.

4. Centrex Plus is a service that uses individual telephone lines to provide service comparable to service which is provided via the alternative technology of trunk lines serving via a private branch exchange or PBX. The Commission classified Centrex Plus switching features and intercom ability as a competitive service in Docket No. U-86-86 and reaffirmed that classification in Docket No. UT-911488.

5. The Company's proposed tariff change would have the effect of changing and increasing rates and charges for customers now receiving Centrex Plus service and for potential customers of that service.

6. Unless the Company offers an appropriate alternative service, whether as totally separate unbundled elements or as separately tariffed elements designed to form part of a Centrex-style package, withdrawal of the service will adversely affect existing and potential future consumers and existing and potential future resellers, and will operate to reduce or inhibit competition.

7. No direct, objective evidence supports the Company's contention that Centrex Plus service is obsolete. Based upon direct evidence, including statements of customers and statistics regarding customer growth, the service is not obsolete.

8. No direct, credible evidence supports the Company's contention that continuing to offer Centrex Plus would result in uneconomic arbitrage. The Company is free to seek repricing if it believes the product to be inappropriately priced.

9. Withdrawal of the service would substantially restrict resellers' ability to meet consumers' needs. The proposal would eliminate resellers, would reduce consumer choice, would restrict resellers' ability to serve consumer needs and would enable USWC to maintain a greater market share than if USWC were required to continue offering Centrex Plus.

10. The availability of suitable replacement services could meet consumer and competitive needs and render withdrawal permissible.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the proposal and the parties to this proceeding.

2. The Commission has the lawful authority to suspend and to reject the proposed withdrawal.

3. Withdrawal of the Centrex Plus service would not be consistent with the public interest and would result in rates that are not fair, just, reasonable, or sufficient.

4. Withdrawal of the Centrex Plus service would be anticompetitive. It would harm existing competition and hinder the development of competition, in the absence of appropriate replacement elements.

5. All motions consistent with this decision are approved; those inconsistent herewith are rejected.

ORDER

The Commission orders that the tariff filing made by U S WEST Communications, Inc., on February 5, 1996 for effect on March 8, 1996, is hereby rejected.

DATED at Olympia, Washington and effective this 26th day of December 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L Nelson

SHARON L. NELSON, Chairman

RICHARD HEMSTAD, Commissioner

Wm R. Gillis

WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

FILE COPY

Public Service Commission of Wisconsin

Public Service Commission Wisconsin
MASTER
FILE COPY

Mr. Don Miller
TDS Telecom, Inc.
301 South Westfield Road
P.O. Box 5158
Madison, WI 53705-0158

Re: Investigation of Tariff Provisions Affecting Resale of CENTREX Services and CENTREX-like Services — 05-TI-143

Dear Mr. Miller:

At its open meeting on November 7, 1996, the Commission determined that several provisions of the CENTREX service tariffs filed by TDS Telecom, Inc., (TDS) affiliates contain unreasonable restrictions on resale. As such they are contrary to both s. 196.219(3)(j), Wis. Stats., and 47 U.S.C. § 251(b)(1). Specifically, the Commission found that the elimination of the ability to aggregate discounts over multiple customer locations unreasonably restricts resale of CENTREX service. The Commission does not object to the replacement of individual contract authority with a standard tariff, or to grandparenting of existing contracts, but those grandparented prices must be made available to any reseller serving a customer eligible for such grandparented prices.

These tariff filings are hereby rejected, and will not be placed on file. The various TDS affiliates may refile these tariffs, at their own initiative, provided the unreasonable restrictions are removed or changed. This letter order is issued under the Commission's jurisdiction in ss. 196.02, 196.26, 196.28, 196.219, 196.39, 196.395, Stats., other provisions of chs. 196 and 227, Stats., as may be pertinent hereto and the provisions of 47 U.S.C., § 251, as applied by the Commission under its jurisdiction and discretion in ch. 196, Stats.

If you have any questions on this matter, please contact Peter R. Jahn of the Commission staff at (608) 267-2338.

By the Commission.

Signed this 8th day of December 1996

Lynda L. Dorr

Lynda L. Dorr
Secretary to the Commission

LLD:PRJ:reb:g:\tele\ss\lorder\centrex.tds

cc: Records Management, PSCW
Service List of docket 05-TI-143

See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in s. 227.53, Stats. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in s. 227.01(3), Stats., a person aggrieved by the order has the further right to file one petition for rehearing as provided in s. 227.49, Stats. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with s. 227.48(2), Stats., and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 4/22/91

[redacted]

PUBLIC SERVICE COMMISSION OF WISCONSIN

Memorandum

November 5, 1996

FOR COMMISSION AGENDA

TO: The Commission

FROM: Scot Cullen, Administrator
Peter Jahn, Communications Rate Analyst
Telecommunications Division

RE: Investigation of Tariff Provisions Affecting Resale of CENTREX Services and CENTREX-like Services — 05-TI-143

Suggested Minute: The Commission rejected several provisions of tariffs filed by Wisconsin Bell, Inc. (dba Ameritech Wisconsin), and various local exchange companies operated by Telephone and Data Systems, Inc. (TDS), on the grounds that the tariffs were anti-competitive and unreasonably restricted resale of CENTREX services.

Background

In spring 1994, several resellers requested that the Commission approve CENTREX and CENTREX-like services (CENTREX) for resale under s. 196.01(9), Stats. On December 7, 1994, the Commission issued a letter order authorizing CENTREX for resale, and directing local exchange carriers to remove all tariff provisions preventing such resale. Following requests for reconsideration, requests for rehearing and court challenges, the Commission held hearings on the matter on February 26-28, 1996. On July 16, 1996, the Commission issued its Final Order in docket 05-TI-137, titled "Investigation of the Authorization of CENTREX and CENTREX-like Services for Resale." That order reconfirmed that CENTREX services must be made available for resale, and ordered all local exchange carriers to remove tariff provisions that restricted the resale of CENTREX services. In the order, the Commission also expressed concern about indications that individual contracting authority for CENTREX services might have been abused. A major rationale for authorizing CENTREX resale was to allow market forces to bring discipline to the CENTREX market, thereby preventing such abuses in the future.

On July 16, 1996, the deadline for removing resale restrictions from tariffs, TDS filed revised CENTREX tariffs for all 14 of its local exchange carriers (LECs) in Wisconsin. On July 24, 1996, Wisconsin Bell, Inc. (henceforth "Ameritech") filed tariffs modifying the rates, terms and conditions affecting CENTREX service. Staff held meetings with representatives of both companies to discuss staff's concerns about those tariffs.

On August 1, 1996, the Commission issued a Notice of Investigation in this docket. On September 13, 1996, the Commission issued a Request for Comments, listing the issues raised by these tariff filings, including whether the tariffs unreasonably restricted resale of CENTREX service. Initial comments were due October 4, 1996, and were filed by Ameritech, TDS, the Wisconsin State Telephone Association, Frontier Communications of Wisconsin, McLeod Telemanagement, Inc., the Telecommunications Resellers Association, AT&T Communications of Wisconsin, Inc., and Global Telecom. Reply comments were due on October 18, 1996, and were filed by Ameritech, TDS Telecom, the Wisconsin State Telephone Association, Frontier Communications of Wisconsin, McLeod Telemanagement, Inc., and GTE North Incorporated.

The TDS Tariff Provisions

The proposed tariff from TDS includes three major changes. TDS proposes eliminating individual contracting authority for CENTREX service and replacing contracts with a standard set of prices. The tariffs would eliminate customer ability to aggregate lines at multiple locations to qualify for usage discounts. Previously, customers with lines at several different locations would be eligible for a discount based on the total number of lines; now the discount is based solely on the number of lines at each individual location. Finally, since the proposed tariff would do away with individual contracts for CENTREX service, TDS proposes reducing rates for all customers with individual contracts priced above the new tariffed rates. Customers with contracts at rates below the tariffed rates would retain their existing rates for the duration of the contract. This "grandparenting" of customers also raises questions. All of these provisions apply to both retail and reseller customers, except that, since TDS has not previously allowed CENTREX resale, no resellers are grandparented.

The Ameritech Tariff Provisions

The Ameritech tariffs make several changes. First, the Ameritech tariff used to allow customers to combine all their lines (in an exchange) into a single CENTREX common block[1]. The new tariff requires a separate CENTREX common block for each discrete customer premises. This provision applies to both retail and reseller customers, and would mean that a customer with multiple locations (for example a bank with several branches) would no longer be able to have a single CENTREX common block. Instead, each location would have its own block, and 5-digit calling would only be possible within the branch (unless direct connections are established - see below.) Calls between branches would require 7-digit dialing, and would cost the standard per-call rates. Multi-line discounts

[1] A CENTREX block is a switch function which segregates and identifies all the numbers belonging to a particular CENTREX service. Customers in the same block have similar numbers, and abbreviated dialing within the block is usually available. The State of Wisconsin has a CENTREX block, incorporating the 26x-xxxx numbers.

would also apply on a per location basis, as in the TDS tariff. The Ameritech tariff exempts airports, education, government, hotel/motel, and health care customers from this provision.

Ameritech has stated that this change is intended to make the price of CENTREX service match more closely the costs of its technological competitors, namely advanced, multi-line customer premises equipment (CPE) like PBXs and key systems. Since such CPE serves only single locations, the cost benefits of PBXs and key systems accrue on a per location basis. It is also intended to prevent intercom calling (free CENTREX calls) between unaffiliated customers.

The second change proposed by Ameritech is an increase in the nonrecurring charge for establishing a CENTREX common block. When combined with the above requirement that each location have a separate common block, this means that the resellers must pay this charge each time they acquire a new customer. The current nonrecurring charge is $130 for small blocks. The new rate, which will not go into effect until January 1, 1997, is $600.

The third change is to prohibit direct interconnection of unaffiliated CENTREX systems. Direct connections originally were used to link CENTREX common blocks to allow intercom calling between customer locations in different exchanges. Direct connections can also link CENTREX common blocks in the same calling area: for example, the bank in the above example could link its branches with direct connections to allow intercom calling between the branches. This provision was intended to prevent resellers from using dedicated lines to connect CENTREX common blocks in separate cities, thereby avoiding toll charges for calls between the customers served by those blocks, but, as worded, prevents all interconnection of reseller customers. Retail customers could still purchase direct connections to avoid toll charges or to allow intercom calling.

The fourth change made by Ameritech is to add the following paragraph in several places in their tariff:

> The customer shall not assign or otherwise transfer its rights or obligations under any CENTREX contract without prior written consent of Ameritech. Such consent will not be unreasonably withheld or delayed. Any provisions to the contrary found elsewhere in this tariff are superseded.

Ameritech contends that this type of language is a standard feature of contracts in other markets.

Staff Analysis of the TDS Tariff

Staff does not object to the TDS proposal to eliminate individual contracts for CENTREX service, if handled in a nondiscriminatory way. Individual contracts require individual negotiations for each customer. A standard price list simplifies order taking for both the customer and the company's sales representatives. Further, as shown in the 05-TI-137 docket, individual contracts require additional training and oversight on the part of management. Since CENTREX has become enough of a commodity for TDS that the company has adopted standard pricing guidelines, and since the options available in the tariff allow customers to customize their service, it makes sense to tariff these prices, thereby avoiding the overhead costs of contracts.

Staff does not agree, however, that eliminating the ability to aggregate multiple locations is a reasonable change. In docket 05-TI-137, Wisconsin State Telephone Association (WSTA) witness Dennis Pickett testified that being able to serve multiple locations cheaply was one advantage of CENTREX service (Tr. pgs. 30 and 50.) The requirement that discounts be calculated separately for each location eliminates much of this advantage.

The following chart is taken from the Badger Telecom, Inc., tariff. Like the other TDS tariffs, the first price is set in relation to the rate for single line business service in the exchange, while the other rates are based on a standard set of term and volume discounts.

CENTREX RATE SCHEDULE FOR GRANTON AND GREENWOOD EXCHANGES						
Number of Centrex Lines	Monthly	12 Months	24 Months	36 Months	48 Months	60 Months
2	35.60	34.80	33.90	33.10	32.20	31.40
3-5	27.10	26.20	25.40	24.50	23.70	22.80
6-15	21.40	20.50	19.70	18.80	18.00	17.10
16-25	15.70	14.80	14.00	13.10	12.30	11.40
26-50	14.30	13.40	12.50	11.70	10.80	10.00
51-100	12.80	12.00	11.10	10.30	9.40	8.60
100 +	10.30	9.40	8.60	7.70	6.80	6.00

This table shows how significant the volume discounts can be.

The primary effect of this change is to prevent resellers from profitably marketing to smaller customers. Telecommunications resellers have always operated by committing to large volumes and long terms, on a take-or-pay basis, and operating on the resulting discounts. The proposed change would eliminate any chance of such volume discounts, and, because the long term contracts are location specific, also prevent the resellers from mitigating the risks of long term contracts by spreading them over a number of customers. The clear effect of this change is to make CENTREX resale uneconomic and, therefore, impossible. As such, the change is an unreasonable restriction or limitation on resale, and is contrary to s. 196.219(3)(j), Wis. Stats., and 47 U.S.C. § 251(b)(1).

TDS has proposed reducing rates for all customers whose contract rates are above the tariffed rates. Staff has no objection to that proposal. However, TDS has also proposed grandparenting all existing contracts where the contract price is below the tariffed rate. While that proposal keeps customers from facing rate increases, it harms resellers. Unless resellers are allowed to obtain these grandparented prices, grandparenting will create a body of customers for whom resellers cannot compete. Even if the Commission were to mandate a fresh-look period, resellers would still be unable to compete, since they would have to compete based on the new, tariffed rates - rates higher than those the grandparented customer would pay. The only reasonable approach to this problem is that recommended by both Ameritech and several potential resellers: allowing all resellers to obtain grandparented rates when serving a customer eligible for that grandparented service.

Staff Analysis of the Ameritech Tariff

The requirement that separate common blocks are required for each separate customer location, coupled with the increase in nonrecurring charges, has the same effect on resellers as the TDS requirement that all discounts be calculated per location: it prevents resale by eliminating any economies of scale available through aggregation. As such, the change means that resellers cannot aggregate discounts, then it is an unreasonable restriction on resale, as described above. In Ameritech's case, however, the federal law mandates that Ameritech offer wholesale rates, at a considerable discount, to resellers. The Commission needs to determine whether this discount can be considered a substitute for aggregation and volume discounts. If so, then resale is still economically possible, and the requirement of a separate CENTREX common block per location would not constitute a barrier to resale.

Even if the Commission does make that determination, the increase in the nonrecurring charges associated with establishing common blocks creates a significant barrier to resale competition. The $600 charge is considerably above both the cost of providing the service, and above the level the Commission would have set under traditional ratemaking procedures. The large up-front cost imposed by this change seriously erodes the resellers' margins. Moreover, it increases the risk factor in CENTREX marketing. Since the reseller will have to recover that nonrecurring cost over the life of the contract, and since Ameritech's rates provide a *de facto* price ceiling, thus limiting the speed of recovery, the reseller will have to be sure of keeping each customer for a longer period of time. This increased risk may make it uneconomical for resellers to market to smaller customers. Ameritech, since it receives the revenue from this charge, has an incentive to increase customer churn in order to maximize the surplus from this nonrecurring charge. Ameritech, by inflating its nonrecurring charges, is decreasing reseller's margins and increasing their risk, thereby creating a barrier to effective competition and to resale of CENTREX services. This should also be considered an unreasonable restriction on resale.

Ameritech has argued that separate common blocks are required to prevent intercom calling between unaffiliated customers. Ameritech's prior tariff had included tariff provisions prohibiting such calling, and allowing for a number of actions, including disconnection, for customers who violate the tariff. Further, Ameritech has shown no evidence that intercom calling among unaffiliated customers is, or will be, a problem. Further, staff sees no reason why such intercom calling would occur: the customer must use special dialing to place an intercom call, and would have no reason to expect such dialing to work when calling a number for an unaffiliated company or person. Even if intercom calling among unaffiliated customers were a serious problem, it would not justify the greater harm inflicted on competitors by Ameritech's "solution."

The prohibition of direct connections for unaffiliated customers is clearly a direct prohibition on resale to certain types of large customers. Under the revised tariff, the bank could purchase direct connections to allow intercom calling between the branches, so long as the bank purchased the service directly from Ameritech. The reseller could not provide the same service, since it could not directly connect the bank's locations (nor combine them into a single common block) to allow intercom calling. Likewise, a customer with offices in Milwaukee and Sheboygan could use a dedicated line to avoid toll charges for call between the two locations if it purchased the service from Ameritech, but a reseller would be prohibited from offering the same service.

The fourth change proposed by Ameritech is to include language requiring approval by Ameritech of any transfers of rights and obligations of CENTREX contracts. It is staff's opinion that this language does not apply to the relationship or contracts between a reseller and its customers. Instead, it would only apply when a CENTREX customer (either a direct retail customer of Ameritech's or a CENTREX reseller, but not a CENTREX reseller's customer) would be bought by, or merge with, a third party. In that case, the rights and obligations of the CENTREX contract would pass to that third party. Ameritech appears to be within its rights to exercise such a provision, provided it is enforced against all its CENTREX customers, whether those customers are retail customers or resellers.

Ameritech has also proposed grandparenting all existing customers. In Ameritech's case, this includes some resellers who currently have CENTREX common blocks which serve multiple locations and multiple customers. Ameritech proposes grandparenting those blocks. This means that resellers could continue to add new customers and locations to those grandparented blocks. If the common block per location restriction is allowed to stand, these resellers would have a major competitive advantage, but that advantage would result from their having entered the market early, not from discrimination on Ameritech's part. The Commission would, if it allows the separate common block requirement to stand, have to decide whether to allow these resellers to retain the service for which they contracted, or to eliminate this advantage in order to "level the playing field." A third option, again assuming the Commission were to allow the separate common block requirement to stand, would be to allow grandparenting of existing contracts for all existing customer locations, but to require that all new reseller customers be placed in separate common blocks.

Potential Impact on the Checklist Docket

The Ameritech tariff changes may have a bearing on its request to gain entry into the interLATA market. That request is being addressed in docket 6720-TI-120, and is not at issue here. However, in order for the Commission to advise the Federal Communications Commission (FCC) with respect to the Ameritech request, the Commission needs to be satisfied that Ameritech has met the conditions in §271(c)(2)(B), often referred to as the "14 point checklist." Item number 14 is "Telecommunications service are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." Section 251(c)(4)(B) states:

> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

As discussed above, the modifications to require a separate CENTREX common block for each customer (coupled with the increase in the nonrecurring charges for common block establishment) and the prohibition against direct interconnection of unaffiliated common blocks have the effect of, and should be considered, unreasonable prohibitions on resale of CENTREX services. As such, they would violate 47 U.S.C. § 251(c)(4)(B). If they remain unchanged, they would constitute a basis for the Commission to recommend denial when it advises the FCC on Ameritech's request for interLATA relief.

Staff Recommendation

Provisions in both the Ameritech and TDS tariffs violate the provisions of s. 196.219, Stats., and §§ 251 and 252 of the federal Act. The TDS tariffs have not yet been placed on file, so the Commission should deny those tariff filings, and allow TDS to refile those tariffs, at its own initiative, after removing the anti-competitive options. The Ameritech filings, because of the different regulatory framework which applies to Ameritech under state statutes, have gone into effect. The Commission should direct Ameritech to file amended tariffs removing the unreasonable restrictions on resale, either by eliminating the common block requirement, or, if the Commission finds that the wholesale tariff allows resale, by reducing the nonrecurring charge to bring it in line with the economic cost of the service. In either case, Ameritech must eliminate the prohibition against resellers purchasing direct connections when those customers could purchase the service at retail.

A letter to that effect for each company is attached.

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Attachments

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in s. 227.53, Stats. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in s. 227.01(3), Stats., a person aggrieved by the order has the further right to file one petition for rehearing as provided in s. 227.49, Stats. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with s. 227.48(2), Stats., and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 4/22/91

Public Service Commission of Wisconsin

Ms. Mary Joanis
Directory Regulatory Affairs
Ameritech Wisconsin
722 N Broadway, 17th Floor
Miwlaukee, WI 53202-4396

Re: Investigation of Tariff Provisions Affecting Resale of CENTREX Services and CENTREX-like Services — 05-TI-143

Dear Ms. Joanis:

At its open meeting today, the Commission determined that several provisions of the recently filed tariff on CENTREX service constitute unreasonable restrictions on resale. As such they are contrary to both s. 196.219(j), Wis. Stats., and 47 U.S.C. § 251(b)(1). Specifically, the Commission found the requirement that each customer location must have a separate CENTREX common block to unreasonably restrict resale of CENTREX service. The Commission made similar findings with regard to the increase in the nonrecurring charges, to establish a common block when combined with the requirement of a separate CENTREX common block for each customer, and with the prohibition against direct connections between unaffiliated customers.

Ameritech is hereby directed to file revised tariffs, within 30 days, eliminating these restrictions. This letter order is issued under the Commission's jurisdiction in ss. 196.02, 196.26, 196.28, 196.219, 196.39, 196.395, Stats., other provisions of chs. 196 and 227, Stats., as may be pertinent hereto and the provisions of 47 U.S.C., § 251, as applied by the Commission under its jurisdiction and discretion in ch. 196, Stats.

If you have any questions on this matter, please contact Peter R. Jahn of the Commission staff at (608) 267-2338.

By the Commission.

Signed this 8th day of November 1996

Lynda L. Dorr

Lynda L. Dorr
Secretary to the Commission

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cc: Records Management, PSCW
Service list of docket 05-TI-143

See attached Notice of Appeal Rights

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Revised 4/22/91